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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Filed

JUN 20 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

Filed
NP

(a)

EBAY INC., a Delaware corporation,

Plaintiff,

vs.

DOTCOM RETAIL LIMITED, a United
Kingdom company; BEAUTYBAY.COM
LIMITED, a United Kingdom company

Defendants.

CV 13-02853

Case No.

DMR

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

Plaintiff eBay Inc. ("eBay") alleges as follows:

1. This is a case involving the willful infringement and dilution of one of the most famous trademarks in the world: EBAY®. Defendants Dotcom Retail Limited ("Dotcom") and BeautyBay.com Limited ("BeautyBay") (collectively, "Defendants") are United Kingdom-based companies that adopted the trademark BEAUTYBAY for an e-commerce website for beauty products located at www.beautybay.com, targeting the same consumers that purchase goods on eBay's worldwide e-commerce platform. Defendants

1 also adopted and used other marks that feature the distinctive suffix “BAY” in connection
2 with their e-commerce business, all in the attempt to capitalize on the renown and
3 popularity of the EBAY mark. Indeed, those other marks, such as “ClearanceBay,” contain
4 the entirety of the EBAY mark. Defendants’ conduct violates well-settled precedent in this
5 circuit, state law, the Lanham Act, and the common law doctrines of passing off and unfair
6 competition. eBay seeks injunctive relief and damages to the extent permitted by law.

7 **I. THE PARTIES**

8 2. Plaintiff eBay is a Delaware corporation having its principal place of
9 business at 2145 Hamilton Avenue, San Jose, California 95125. eBay is one of the world’s
10 foremost e-commerce and online marketplaces.

11 3. Upon information and belief, Defendant Dotcom is a United Kingdom
12 company with its headquarters in the United Kingdom, with operations and employees in
13 the United States (US). Dotcom shares in the ownership and operation of the
14 BEAUTYBAY business, and is listed as the owner of the domain name
15 www.beautybay.com and pending federal trademark application for the BEAUTY BAY
16 mark.

17 4. Upon information and belief, Defendant BeautyBay is a United Kingdom
18 company with its headquarters in the United Kingdom, with operations and/or employees in
19 the United States. BeautyBay shares in the ownership and/or operation of the
20 BEAUTYBAY business and the beautybay.com website, and “BeautyBay.com Ltd.” is
21 listed on the beautybay.com website as its owner.

22 **II. JURISDICTION AND VENUE**

23 5. This Court has personal jurisdiction over Defendants because, on
24 information and belief, they conduct or have conducted business in the State of California
25 under the infringing BEAUTYBAY name and mark; they operate the infringing
26 beautybay.com website targeting and selling products to consumers in California and in this
27 district; have sold and shipped products into California; and have agreements with vendors
28 and suppliers in this district for products that are sold on their website.

1 6. This Court has jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and
2 28 U.S.C. §§ 1331 and 1338(a) and (b), and has supplemental jurisdiction under 28 U.S.C.
3 § 1367(a) over eBay's claims under California law.

4 7. Venue is proper in this district under 28 U.S.C. §1391. As stated above in
5 Paragraph 5, eBay is informed and believes that Defendants transact business in or solicit
6 business from this district and may otherwise be found here, and a substantial part of the
7 events giving rise to this litigation, including the injury to eBay, occurred in the Northern
8 District of California.

9 **III. INTRADISTRICT ASSIGNMENT**

10 8. This is an intellectual property action and therefore shall be assigned on a
11 district-wide basis per Civil L.R. 3-2(c).

12 **COMMON ALLEGATIONS**

13 **IV. EBAY'S BUSINESS AND ITS MARKS**

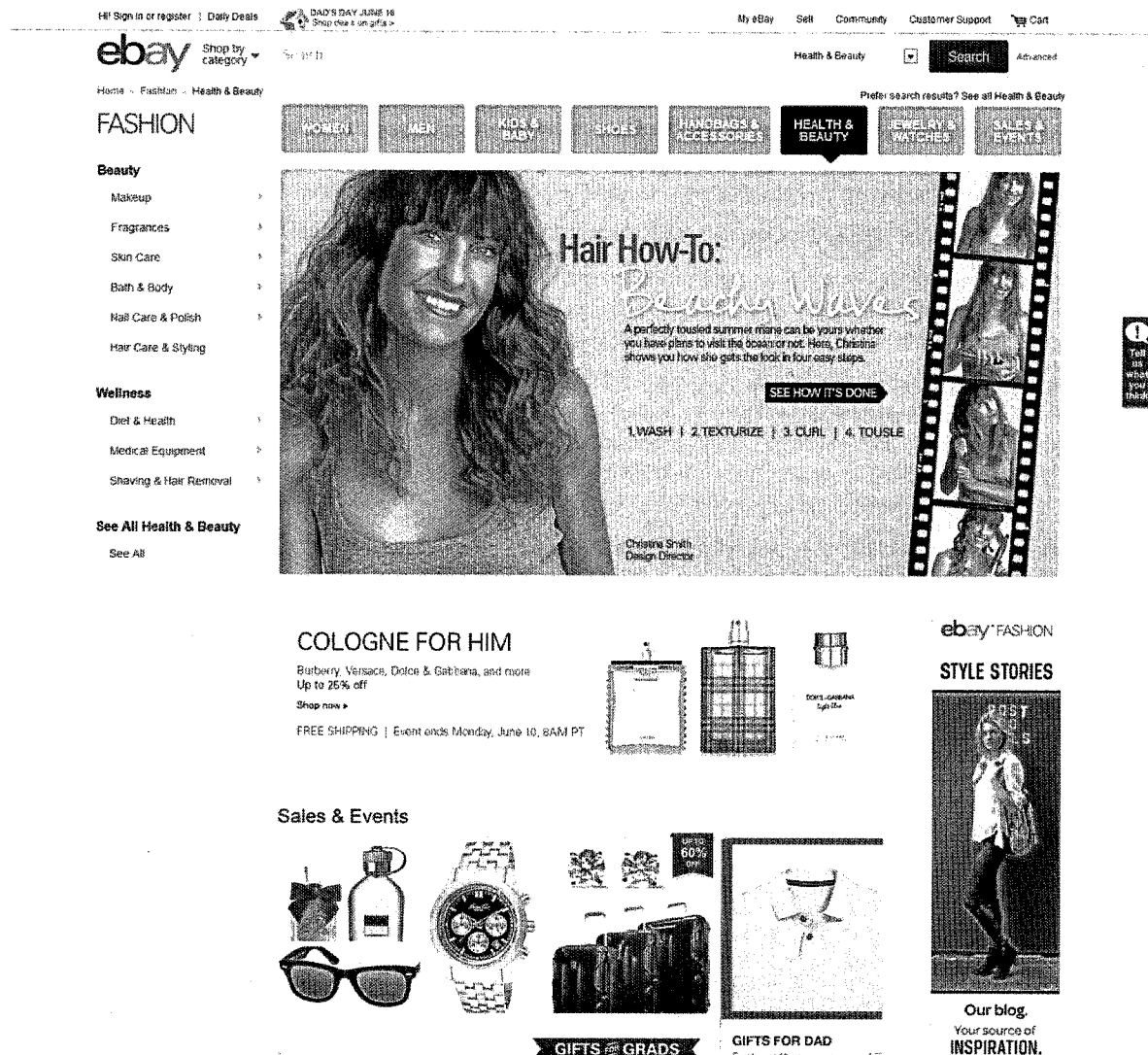
14 9. eBay has operated its ebay.com website under the EBAY name and mark
15 continuously since September of 1995 in connection with its services of providing an online
16 marketplace for buyers and sellers to buy, sell, bid on, and/or trade goods and services.
17 Since that time, eBay has evolved into a global technology company that enables commerce
18 by providing online platforms, tools and services to help individuals and small, medium and
19 large merchants around the globe engage in online and mobile commerce.

20 10. eBay offers merchants and individuals the ability to choose to list their
21 products and services either through fixed price listings or an auction-style format. eBay's
22 fixed price format allows buyers and sellers to close transactions at a predetermined price
23 set by the seller. In contrast, eBay's optional auction-style format allows a seller to select a
24 minimum price for opening bids, though sellers can also offer to accept purchases at a fixed
25 price for those consumers who are willing to pay over the minimum price and perhaps do
26 not have the ability or desire to wait for an auction. In 2012, eBay's fixed price listing
27 format continued to increase in popularity on ebay.com, accounting for approximately 66%
28

of eBay's gross merchandise volume ("GMV"), which is defined as the total value of all closed items between users on eBay's marketplace trading platforms.

11. Merchants on eBay have the ability to exhibit all of their listings in a single place on the eBay platform, thereby creating a store within eBay. Merchants can then use this store format to describe their businesses and product offerings via customized pages on the eBay site.

12. The vast array of goods and services offered on the eBay platform are organized according to key categories that represent various market sectors. For example, there are categories such as "Antiques," "Consumer Electronics," and notably, "Health and Beauty," which is one of eBay's most successful market segments. As an example, a screenshot from the "Health and Beauty" category on eBay's website is shown below:



13. eBay coined the mark EBAY. In addition to its extensive common law rights in the mark, eBay owns multiple federal US applications and registrations for the EBAY mark and marks incorporating the EBAY mark (together the “EBAY Marks”), including, but not limited to the following:

Mark	Jurisdiction	Registration No.
EBAY	US	2759150
EBAY	US	2700675
EBAY	US	2501043
EBAY	US	2700836
EBAY	US	2578260
EBAY	US	2522630
EBAY	US	2604374
EBAY	US	2518652
EBAY	US	2666767
EBAY	US	2367932
EBAY	US	2218732
EBAY	US	2592515
EBAY	US	2744717
EBAY	US	2913401
EBAY	US	2926481
EBAY TO GO	US	3441811
EBAY TO GO	US	3437241
YOU CAN GET IT ON EBAY	US	3299409

A number of these registrations are incontestable pursuant to 15 U.S.C. § 1065.

1 14. eBay owns numerous international trademark registrations for the EBAY
2 mark, including, for example, registrations in Australia, China, Hong Kong, India,
3 Indonesia, Japan, Malaysia, New Zealand, Singapore, South Korea, Taiwan, Thailand,
4 Vietnam, the European Union, Benelux, Bulgaria, Czech Republic, Germany, Hungary,
5 Iceland, Norway, Romania, Russia, Switzerland, United Kingdom, Brazil, Canada, Chile,
6 Colombia, Jamaica, Peru, Venezuela, Egypt, Israel, Pakistan, Saudi Arabia, and South
7 Africa. eBay also owns numerous pending trademark applications for the EBAY mark in
8 various other jurisdictions around the world.

9 15. eBay operates its primary website at the domain address www.ebay.com.
10 eBay also operates multiple country-specific eBay-branded online marketplaces, including
11 in numerous countries throughout Europe, Australia, Canada, China, Hong Kong, India,
12 Malaysia, New Zealand, the Philippines, Singapore, and the United States and its services
13 are advertised in those markets. eBay's services are offered in numerous languages and are
14 accessible via the internet from virtually any location around the globe.

15 16. Since its inception, eBay has registered over 288 million users around the
16 world. In 2012, there were over 112 million active eBay users, meaning users who had bid
17 on, bought, or listed an item on eBay in the last twelve months. The company currently
18 hosts tens of millions of listings of items for sale or bid on its ebay.com website in
19 approximately 50,000 categories, including beauty supply products and fragrances, for
20 which there are currently nearly one million items listed. Globally speaking, eBay boasts
21 more than 350 million listings across all of its eBay country-specific platforms. The eBay
22 website generates well over 1 billion page views per day. In 2012, these page views have
23 generated over US\$2,100 in transactions *per second*, amounting to a grand total of over
24 US\$67 billion in goods sold on eBay. Over the years, ebay.com has ranked among the
25 most visited websites in the world, and reached the top ten most visited websites in the
26 United States in terms of internet traffic.

27 17. eBay has adapted to the ubiquity of the internet and adoption of mobile
28 internet devices. Consumers not only reach eBay's marketplace through computers, but

1 also through mobile internet devices such as smart phones and tablet computers. The
2 number of mobile transactions (*i.e.* through smart phones and tablet computers) for
3 products purchased or sold on eBay's e-commerce platform has grown exponentially over
4 recent years. Indeed, the proliferation of mobile technology and changes in user behavior
5 has led to the blurring of traditional notions of off-line commerce, on-line commerce, m-
6 commerce, and e-commerce such that today they have all merged into simply commerce.

7 18. In addition to operating its world-famous commerce platform, eBay
8 generates a large amount of business through marketing services, classifieds and
9 advertising. The US and international eBay online marketplaces enjoy widespread
10 recognition as high-quality trading forums, and the EBAY Marks embody the substantial
11 goodwill that eBay has earned as a result of providing a diverse and reputable marketplace.

12 19. eBay has devoted substantial resources to advertising and promoting its
13 products and services under the EBAY Marks. It has spent many millions of dollars on
14 worldwide advertising and promotion. eBay has advertised and promoted the EBAY mark
15 across many global sites on the internet, including YouTube, AOL, Yahoo!, Google,
16 Facebook, and MSN, and in print, radio and television media, through venues such as trade
17 shows and on college campuses. eBay's advertising efforts have included various high-
18 profile television advertising campaigns, with placement during popular prime time
19 programming and major sporting events. eBay's founder and its executives are often called
20 upon to speak, and interviews of them have been featured in prominent radio and television
21 programs and outlets such as *The Today Show*, National Public Radio, and the National
22 Press Club. eBay has received the Marketing Excellent Award from the Chartered Institute
23 of Marketing, and earned the prestigious silver CLIO Award in the Packaging Category for
24 its "eBay Box." As a result of all of these efforts, the EBAY name and mark are famous
25 worldwide and embody substantial and valuable goodwill.

26 20. In addition to its own advertising and promotion efforts across all media,
27 eBay has been the subject of thousands of unsolicited articles in the media, including
28 national and international print, radio and television, highlighting eBay's pioneering and

1 successful efforts in online commerce. eBay is one of the most successful shopping sites on
2 the internet.

3 21. The success of eBay's branding has been the subject of numerous awards as
4 recognized by the media worldwide. In its report of *Best Global Brands 2012*, Interbrand
5 ranked eBay as the 36th most valuable brand in the world – ahead of such famous brands as
6 GUCCI, SONY, FORD, NESTLE, XEROX, ADIDAS, VISA, STARBUCKS, and
7 JOHNSON & JOHNSON. eBay was also ranked 36th in 2011. In that same year,
8 Interbrand ranked eBay as the twelfth most valuable US retail brand. eBay consistently
9 ranks as one of the top two most valuable brands in the Internet Services Sector. According
10 to Interbrand, eBay's estimated value has steadily increased over the past nine years:

Year	eBay's Estimated Brand Value*
2012	10.95
2011	9.81
2010	8.45
2009	7.35
2008	7.99
2007	7.45
2006	6.75
2005	5.70
2004	4.70
	*Source – Interbrand (in billions)

22. For years, eBay has garnered many other accolades, among them the 2007 National Medal of Technology and Innovation award by the President of the United States; Verisign's distinguished ".com 25" for pioneering internet innovation; *Fortune* magazine's "Top 100 Fastest Growing Companies" (ranking eBay as 8th) in August 2003; *Business Week Online*, "The eBay Economy" in August 2003; *Red Herring* magazine's "The Top 100 Companies Most Likely to Change the World" in May 2001; Harvard Business School's "Entrepreneurial Company of the Year" in May 2000; *Forbes* magazine's "Favorite Auction Site" in December 1999; *Business Week* magazine's "Info Tech 100" in July 1999; *Ad Week* magazine's "Top Marketers of the Year" in May 1999; and The Webby Award's "Top E-Commerce Site" in March 1999.

23. eBay takes its role as a responsible corporate citizen very seriously. Over the years, eBay has received such awards as the PG&E Integration Award, the 2012 Uptime Institute Green Enterprise IT Award, Ethisphere.com's 2011 World's Most Ethical Companies, the 2010 Public Counsel Corporate Achievement Award, and the 2010 Social Innovation Award, among numerous other recognitions.

24. The EBAY mark was found to be famous by both the United States Court of Appeals for the Ninth Circuit (in litigation over the website perfumebay.com) and the United States District Court for the Northern District of New York (in litigation over the website ebaytoo.com). In addition, numerous WIPO panels have determined that the EBAY mark is famous. *See, e.g., eBay Inc. v. Aragrafi Multimedya Hizmetleri*, WIPO Case No. D2008-1935 (transferring EBAYCATWALK.COM to eBay); *eBay Inc. v. RLE enterprises*, WIPO Case No. D2008-1068 (transferring EBAYIP.COM and EBAYOFIP.COM to eBay); *eBay Inc. v David Sach*, WIPO Case No. D2009-1083 (transferring EBAY-CZ.COM to eBay).

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1 **V. DEFENDANTS AND THEIR WRONGFUL ACTIVITIES**

2 25. In recent years, eBay learned that Defendants had previously, upon
3 information and belief, operated an e-commerce website at fragrancebay.com called
4 FragranceBay, which wholly contained the term “eBay” in it, together with the related
5 company FragranceBay.com Ltd. Upon information and belief, FragranceBay.com Ltd has
6 been dissolved and the FragranceBay website is no longer active, though the domain name
7 www.fragrancebay.com is still owned by Defendant Dotcom; while the URL was active, it
8 was a website offering for sale perfumes and other scented products. Upon information and
9 belief, Defendants selected the FragranceBay trade name, trademark, and domain name to
10 trade off of the goodwill eBay had developed in the EBAY mark.

11 26. eBay recently learned that Defendants had, on information and belief, used
12 the mark CLEARANCEBAY, which also contains the term eBay in its entirety, to sell their
13 products and services. Upon information and belief, Defendants selected the
14 CLEARANCEBAY mark in order to further trade off of the goodwill eBay had developed
15 in the EBAY mark.

16 27. Upon information and belief, Defendants eventually decided to rename their
17 e-commerce website and chose the name “BeautyBay,” purchased the www.beautybay.com
18 domain name in 2005, and launched their business, though initially, only in the UK, and
19 formed the company BeautyBay.com Limited in 2007, and then expanded to the US. Not
20 only have Defendants chosen a material element of eBay’s arbitrary and famous mark
21 “Bay” to signify an a venue for online shopping, but significantly, from an aural standpoint,
22 the name “BeautyBay” contains the term “eBay” in its entirety, as well.

23 ///

24 ///

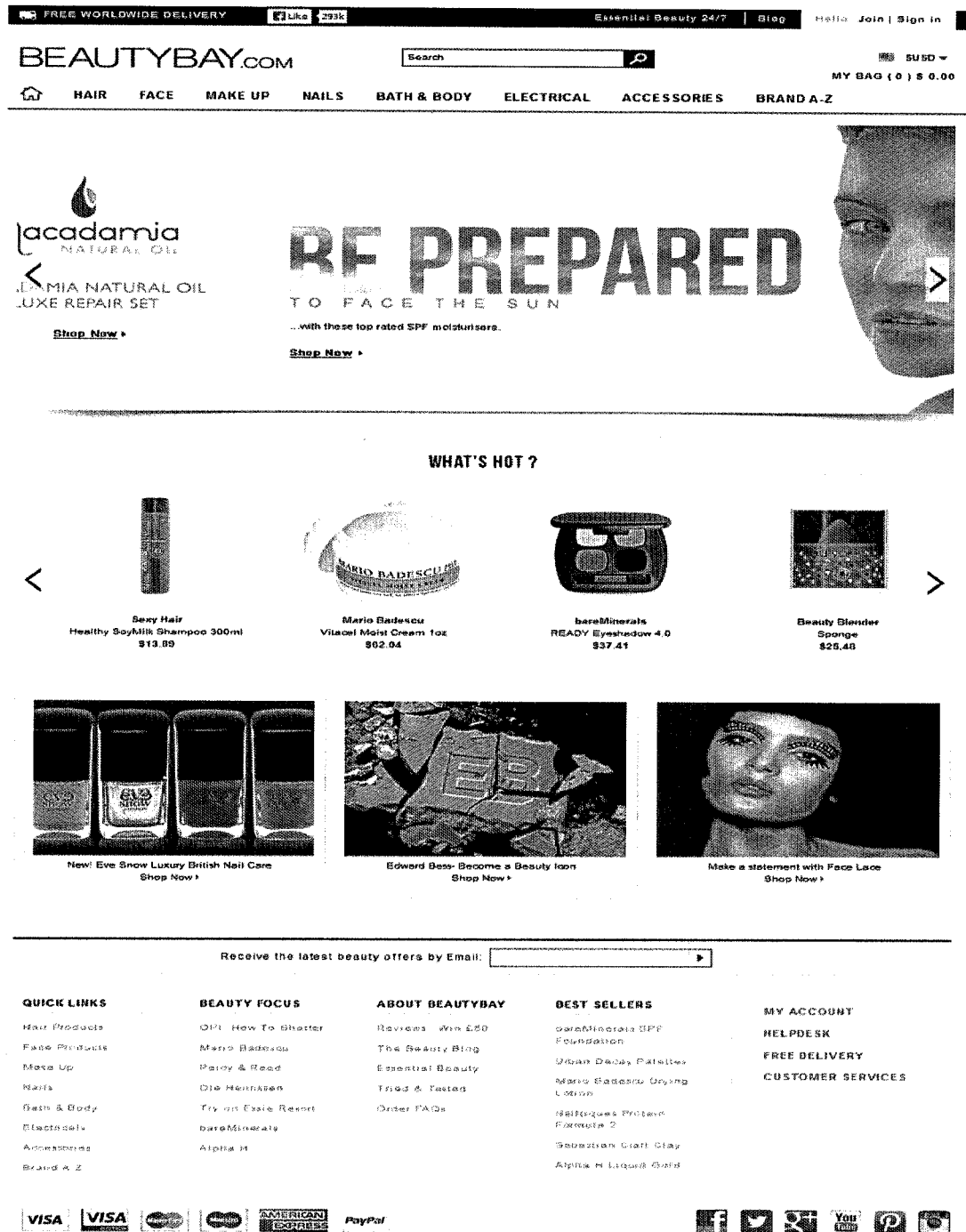
25 ///

26 ///

27 ///

28 ///

28. Defendants' website uses the BEAUTYBAY mark as follows, as a
conjoined term:



Screenshot from www.beautybay.com

1 29. Upon information and belief, Defendants selected the BEAUTYBAY name,
2 trademark, and domain name to trade off of the goodwill eBay had developed in the EBAY
3 mark. Defendants' website is an e-commerce website focused on skin-care and beauty
4 products. As previously noted, eBay's health and beauty category is one of its most
5 successful segments.

6 30. Upon information and belief, Defendants owns numerous domain names that
7 include "BeautyBay" or a variation thereof. These include www.beautybay.org,
8 www.beauty-bay.com, and www.beautybay.info, among others. Upon information and
9 belief, Defendants also own numerous additional domain names that include the "BAY"
10 suffix. These include www.fragrancebay.com and www.fragrancebay.info, among others.
11 Defendants also operate a blog at beautybay.com.

12 31. Upon information and belief, Defendants actively advertise and draw
13 customers from the US, UK, and other countries to their beautybay.com website through
14 the use of popular search engines and social media platforms, such as Google and
15 Facebook.

16 32. Defendants clearly target US consumers through their website, including by
17 soliciting reviews and product purchases, and by offering free shipping to the US.

18 33. On October 23, 2009, with full knowledge of eBay's rights and trademark
19 registrations, Defendant Dotcom applied to register the mark BEAUTY BAY (even though
20 its website and URL use the conjoined mark BEAUTYBAY) with the United States Patent
21 and Trademark Office ("USPTO") in connection with "retail store services in the field of
22 fragrances, perfume, toiletries, cosmetics, soaps, shampoos, hair care preparations, skin
23 care preparations, essential oils, sun care and tanning preparations," in International Class
24 35 – the same Class as the majority of eBay's trademark registrations.

25 34. eBay timely filed a Notice of Opposition with the USPTO, objecting to
26 Defendants' attempt to register the BEAUTY BAY mark. That opposition is pending.

27 35. Defendants' BEAUTYBAY marks (including the conjoined and separated
28 uses of BEAUTY and BAY) (hereinafter the "BEAUTYBAY Marks"), as well as its use of

1 the mark CLEARANCEBAY, are highly similar to the EBAY mark. Defendants' marks
2 follow the same pattern as the many "generic term plus BAY" marks that surfaced
3 following the success of eBay. The term BEAUTY is generic or merely descriptive of
4 Defendants' services (an e-commerce website featuring beauty care products), while the
5 term BAY is completely arbitrary as applied to eBay's various services and those offered by
6 Defendants. By combining the generic term BEAUTY with the dominant, arbitrary, and
7 distinctive term BAY, Defendants created a "generic plus BAY" mark that emulates and
8 calls to mind eBay and its famous e-commerce platform.

9 36. The services offered under the BEAUTYBAY Marks are identical and/or
10 highly similar to those provided by eBay. For example, Defendants sell makeup (from
11 brands such as Bare Escentuals and RMK), skin care products (including brands like
12 Gatineau and Vitage), hair care products (from companies including Bedhead and Nioxin),
13 and accessories like brushes, sponges, nail files, and tweezers. eBay provides various
14 services under the EBAY Marks, which includes the online sale of health and beauty
15 products from the same or similar brands as those offered by Defendants.

16 37. Further, Defendants' services are identical and/or highly related to, and
17 marketed in the same way as, eBay's services.

18 38. Upon information and belief, Defendants selected the BEAUTYBAY Marks,
19 and other "generic plus BAY" marks that contain the entirety of eBay's marks, with full
20 knowledge of, and intent to cause confusion with, the EBAY mark.

21 39. eBay is not affiliated or connected with Defendants or their services; nor has
22 eBay endorsed or sponsored Defendants or their services.

23 40. There is no issue as to priority of use. eBay began using its EBAY mark in
24 1995, and enjoys priority as a result of the filing dates of its trademark registrations, well
25 prior to Defendants' first use of the BEAUTYBAY Marks and the filing and priority date of
26 its corresponding US trademark application.

1 41. Upon information and belief, Defendants' use of the BEAUTYBAY name
2 and BEAUTYBAY Marks has resulted and is likely to result in actual confusion in the
3 marketplace.

4 42. Defendants' unauthorized use of the BEAUTYBAY name and
5 BEAUTYBAY Marks, as well as the other conduct described above:

- 6 (a) is likely to cause confusion (including initial interest confusion), to
7 cause mistake, and/or to deceive customers and potential customers
8 of the parties, as to the origin, sponsorship, or approval of
9 Defendants' products and services, or as to some affiliation,
10 connection, or association of Defendants with eBay;
11 (b) enables Defendants to trade on and receive the benefit of goodwill
12 eBay built up at great labor and expense over several years, and to
13 gain acceptance for Defendants' products and services not solely on
14 their own merits, but on the reputation and goodwill of eBay, its
15 trademarks, and its products and services;
16 (c) is likely to dilute the distinctiveness of the famous EBAY mark;
17 (d) unlawfully removes from eBay the ability to control the nature and
18 quality of products and services provided under its marks and places
19 the goodwill and valuable reputation of its EBAY name and mark in
20 the hands of Defendants, over which eBay has no control; and
21 (e) constitutes unfair competition in violation of state, federal, and
22 common law.

23 43. eBay has been damaged and continues to be damaged by Defendants'
24 unauthorized use of the BEAUTYBAY Marks and the acts described above.

25 44. Unless these acts are restrained by this Court, they will continue to cause
26 irreparable injury to eBay and to the public for which there is no adequate remedy at law.

1 45. In spite of multiple attempts by eBay to resolve the dispute amicably,
2 Defendants have persisted in using the BEAUTYBAY Marks, leaving eBay no choice but to
3 file this Complaint and to protect its valuable trademark.

4 **FIRST CAUSE OF ACTION**
5 **TRADEMARK INFRINGEMENT**
6 **(15 U.S.C. § 1114)**

7 46. eBay realleges and incorporates herein by reference the matters alleged in
8 Paragraphs 1 through 45 of this Complaint.

9 47. The EBAY mark is strong, famous, and distinctive.

10 48. The BEAUTYBAY name and BEAUTYBAY Marks are confusingly similar
11 to the EBAY mark in appearance, sound, meaning and commercial impression. Both eBay
12 and Defendants offer online shopping and e-commerce services through the same channels
13 of trade, namely the internet. The parties target the same and similar consumers and
14 retailers. The parties all maintain websites: eBay's website is located at www.ebay.com and
15 was registered in 1995, while Defendants' website is located at the URL
16 www.beautybay.com, which was registered well after eBay adopted its URL.

17 49. Defendants are using the BEAUTYBAY Marks in US and international
18 commerce in connection with their business without eBay's consent. Defendants had actual
19 notice and knowledge, as well as constructive notice, of eBay's ownership, use, and
20 registrations of the EBAY mark pursuant to 15 U.S.C. § 1072 well prior to Defendants'
21 adoption and use of the BEAUTYBAY Marks.

22 50. On information and belief, Defendants are likely to expand the scope and
23 nature of the services they offer under the BEAUTYBAY Marks, and have already
24 expanded their use of the marks within the United States by increasingly targeting US
25 consumers.

26 51. Given the uniqueness of the eBay name in the field of online commerce,
27 Defendants' use of the confusingly similar BEAUTYBAY Marks, as well as other "generic
28 plus BAY" marks such as CLEARANCEBAY, is likely to attract consumers to Defendants'

1 services, causing both initial interest and actual confusion as to the source of Defendants'
2 services and their relationship to eBay.

3 52. Defendants' unauthorized use of the BEAUTYBAY Marks falsely indicates
4 to consumers that Defendants' products and services are in some manner connected with,
5 sponsored by, affiliated with, or related to eBay and the goods and services of eBay.
6 Defendants' unauthorized use of the BEAUTYBAY Marks is also likely to cause consumers
7 to be confused as to the source, nature and quality of the products and services Dotcom is
8 promoting or selling.

9 53. Defendants' unauthorized use of the BEAUTYBAY Marks in connection
10 with the marketing and sale of their products and services allows, and will continue to
11 allow, Defendants to receive the benefit of the goodwill established at great labor and
12 expense by eBay and to gain acceptance of Defendants' goods and services, not based on
13 the merits of those goods or services, but on eBay's reputation and goodwill.

14 54. Defendants' unauthorized use of the BEAUTYBAY Marks in connection
15 with the marketing and sale of their goods and services deprives eBay of the ability to
16 control the consumer perception of the quality of the goods and services marketed under the
17 EBAY mark, and places eBay's valuable reputation and goodwill in the hands of
18 Defendants, over which eBay has no control. Any defects, objections, or faults found with
19 Defendants' services marketed under the BEAUTYBAY Marks could negatively reflect
20 upon and injury the reputation that eBay has established for its services.

21 55. Defendants' continued use of the BEAUTYBAY Marks will damage eBay
22 because such use has caused confusion, and is likely to cause further confusion, or to cause
23 mistake, or to deceive consumers or potential consumers in violation of the Lanham Act, 15
24 U.S.C. § 1114.

25 56. eBay has been, is now, and will be irreparably injured and damaged by
26 Defendants' trademark infringement, and unless enjoined by the Court, eBay will suffer
27 further harm to its name, reputation and goodwill. This harm constitutes an injury for which
28 eBay has no adequate remedy at law.

1 57. Defendants' infringement of the EBAY mark is deliberate, willful, and
2 fraudulent, and constitutes a knowing use of the EBAY mark. eBay is therefore entitled to
3 recover its actual damages, enhanced damages, its attorneys' fees and costs incurred in this
4 action, and prejudgment interest.

5 **SECOND CAUSE OF ACTION**
6 **FALSE DESIGNATION OF ORIGIN AND TRADE NAME INFRINGEMENT**
7 **(15 U.S.C. § 1125(A))**

8 58. eBay realleges and incorporates herein by reference the matters alleged in
9 Paragraphs 1 through 57 of this Complaint.

10 59. Defendants' use of the BeautyBay trade name and BEAUTYBAY Marks, as
11 well as other "generic plus BAY" marks such as CLEARANCEBAY, falsely suggests that
12 their products and services are connected with, sponsored by, affiliated with, or related to
13 eBay, and constitutes a false designation of origin in violation of 15 U.S.C. § 1125(a).

14 60. eBay has been, is now, and will be irreparably injured and damaged by
15 Defendants' aforementioned acts, and unless enjoined by the Court, eBay will suffer further
16 harm to its name, reputation and goodwill. This harm constitutes an injury for which eBay
17 has no adequate remedy at law.

18 61. Defendants' wrongful use of the BEAUTYBAY trade name and Marks is
19 deliberate, willful, and fraudulent, and constitutes a knowing use of a mark confusingly
20 similar to the EBAY mark. eBay is therefore entitled to recover its actual damages,
21 enhanced damages, its attorneys' fees and costs incurred in this action, and prejudgment
22 interest.

23 **THIRD CAUSE OF ACTION**
24 **FEDERAL TRADEMARK DILUTION**
25 **(15 U.S.C. § 1125(C))**

26 62. eBay realleges and incorporates herein by reference the matters alleged in
27 paragraphs 1 through 61 of this Complaint.
28

1 63. The federally registered EBAY mark is highly distinctive and widely
2 recognized among the general consuming public, including consumers, businesses and
3 industry, and identifies the products and services of eBay in the minds of consumers.

4 64. To protect the integrity of its famous mark, eBay actively polices against
5 marks that infringe or dilute its marks in the United States.

6 65. Defendants' unauthorized use of the BEAUTYBAY name and
7 BEAUTYBAY Marks began after eBay's EBAY mark had become famous.

8 66. The BEAUTYBAY trade name and BEAUTYBAY Marks are similar if not
9 nearly identical to the EBAY name and mark. Thus, Defendants' unauthorized use of the
10 BEAUTYBAY name and BEAUTYBAY Marks has had, and will continue to have, an
11 adverse effect upon the value and distinctive quality of the EBAY mark. Defendants' acts
12 blur, erode, and whittle away at the distinctiveness, prestige, and identity-evoking quality of
13 the EBAY mark.

14 67. Furthermore, given consumers' sensitivity towards divulging financial
15 information, eBay's hard-earned, longstanding reputation in the field of online transactions
16 processing will be tarnished by any missteps by Defendants.

17 68. Defendants' acts have diluted and are likely to continue diluting the famous
18 EBAY mark in violation of 15 U.S.C. § 1125(c).

19 69. Defendants willfully intended to trade on eBay's image and reputation and
20 to dilute the EBAY mark, acted with reason to know, or was willfully blind as to the
21 consequences of their actions.

22 70. eBay has been, is now, and will be irreparably injured and damaged by
23 Defendants' aforementioned acts, and unless enjoined by the Court, eBay will suffer further
24 harm to its name, reputation and goodwill. This harm constitutes an injury for which eBay
25 has no adequate remedy at law.

26 ///

**FOURTH CAUSE OF ACTION
INJURY TO BUSINESS REPUTATION AND
DILUTION UNDER CALIFORNIA LAW
(CAL. BUS. & PROF. CODE §14247)**

71. eBay realleges and incorporates herein by reference the matters alleged in paragraphs 1 through 70 of this Complaint.

72. The EBAY mark is distinctive and famous within the meaning of the California Business and Professions Code.

73. Defendants' unauthorized use of the BEAUTYBAY name and BEAUTYBAY Marks is likely to injure eBay's business reputation, and has diluted, and/or is likely to dilute, the distinctive quality of the EBAY mark and trade name in violation of the California Business and Professions Code §14247.

74. Defendants willfully intended to trade on eBay's image and reputation and to dilute the EBAY mark, acted with reason to know, or was willfully blind as to the consequences of their actions.

75. eBay has been, is now, and will be irreparably injured and damaged by Defendants' aforementioned acts, and unless enjoined by the Court, eBay will suffer further harm to its name, reputation and goodwill. This harm constitutes an injury for which eBay has no adequate remedy at law.

76. eBay is therefore entitled to a judgment enjoining and restraining Defendants from engaging in further acts of dilution pursuant to California Business and Professions Code § 14247.

**FIFTH CAUSE OF ACTION
COMMON LAW PASSING OFF
AND UNFAIR COMPETITION**

77. eBay realleges and incorporates herein by reference the matters alleged in paragraphs 1 through 76 of this Complaint.

1 78. Defendants' aforementioned actions, including but not limited to their
2 unauthorized use of the BEAUTYBAY name and BEAUTYBAY Marks, constitute passing
3 off and unfair competition of the EBAY mark in violation of the common law of California.

4 79. Upon information and belief, Defendants engaged and continue to engage in
5 such actions in unfair competition and with the intention of interfering with and trading on
6 the business reputation and goodwill created by eBay through its tireless efforts and
7 investment.

8 80. Defendants' wrongful acts have caused and will continue to cause eBay
9 irreparable harm and competitive injury. eBay has no adequate remedy at law.

10 81. Defendants' conduct has been willful, wanton, and in reckless disregard of
11 eBay's rights.

12 82. eBay is entitled to a judgment enjoining and restraining Defendants from
13 engaging in further acts of infringement and unfair competition.

14 **SIXTH CAUSE OF ACTION**
15 **UNFAIR COMPETITION**
16 **(CAL. BUS & PROF. CODE § 17200)**

17 83. eBay realleges and incorporates herein by reference the matters alleged in
18 Paragraphs 1 through 82 of this Complaint.

19 84. Defendants' acts described above constitute unfair competition in violation
20 of California Business and Professional Code § 17200 et seq., as they are likely to deceive
21 the public.

22 85. Defendants' acts of unfair competition have caused eBay injury in fact, and
23 will continue to cause eBay irreparable harm. eBay has no adequate remedy at law for
24 Defendants' unfair competition.

25 86. eBay is entitled to a judgment enjoining and restraining Defendants from
26 engaging in further unfair competition.
27
28

**SEVENTH CAUSE OF ACTION
TRADE NAME INFRINGEMENT
(CAL. BUS & PROF. CODE § 14415 AND CALIFORNIA COMMON LAW)**

87. eBay realleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 86 of this Complaint.

88. The eBay trade name is distinctive, and symbolizes the tremendous goodwill and reputation that eBay has earned over many years.

89. The eBay trade name is protectable under California statutory and common law.

90. Defendants' acts described, including their use of a confusingly similar name in connection with their business, constitute trade name infringement in violation of California Business and Professional Code § 14415 et seq. and California common law.

91. Defendants' acts of trade name infringement have caused eBay injury in fact, and will continue to cause eBay irreparable harm. eBay has no adequate remedy at law for Defendants' conduct described herein.

92. eBay is entitled to a judgment enjoining and restraining Defendants from engaging in further infringement of its trade name.

PRAYER FOR RELIEF

WHEREFORE, eBay prays for relief as follows:

1. Entry of an order and judgment requiring that Defendants and their officers, agents, servants, employees, owners and representatives, and all other persons, firms or corporations in active concert or participation with it, be enjoined and restrained from:

(a) using the BeautyBay name, the BEAUTYBAY Marks (as defined above), and the www.fragrancebay.com and www.beautybay.com domain names, or any other confusingly similar name or mark; (b) any further or future use of the CLEARANCEBAY and FRAGRANCEBAY names and marks; (c) doing any act or thing calculated or likely to cause confusion or mistake in the minds of members of the public, or prospective customers of eBay's products or services, as to the source of the products or services offered for sale,

1 distributed, or sold, or likely to deceive members of the public, or prospective customers,
2 into believing that there is some connection between Defendants and eBay; and (d)
3 committing any acts which will tarnish, blur, or dilute, or which are likely to tarnish, blur,
4 or dilute the distinctive quality of the famous EBAY mark;

5 2. A judgment ordering Defendants, pursuant to 15 U.S.C. § 1116(a), to file
6 with this Court and serve upon eBay within thirty (30) days after entry of the injunction, a
7 report in writing under oath setting forth in detail the manner and form in which Defendants
8 have complied with the injunction, ceased all marketing and sales of goods and services
9 under the BeautyBay name, the BEAUTYBAY Marks, and the marks CLEARANCEBAY
10 and FRAGRANCEBAY, as set forth above;

11 3. A judgment ordering Defendants, pursuant to 15 U.S.C. § 1118, to deliver
12 up for destruction, or to show proof of said destruction or sufficient modification to
13 eliminate the infringing matter, all articles, packages, wrappers, products, displays, labels,
14 signs, vehicle displays or signs, circulars, kits, packaging, letterhead, business cards,
15 promotional items, clothing, literature, sales aids, receptacles or other matter in the
16 possession, custody, or under the control of Defendants or their agents bearing in any
17 manner the BEAUTYBAY Marks, the BeautyBay trade name, the CLEARANCEBAY and
18 FRAGRANCEBAY names and marks, or any mark that is confusingly similar to or a
19 colorable imitation of this these marks, both alone and in combination with other words or
20 terms;

21 4. A judgment ordering Defendants to take all steps necessary to cancel or
22 remove the trade names BeautyBay and Beauty Bay from any state(s) in which Defendants
23 are licensed or registered to do business, and to otherwise take all steps necessary to change
24 those business names;

25 5. An Order, pursuant to 15 U.S.C. § 1119, directing the United States Patent
26 and Trademark Office to cancel Defendants' application to register the BEAUTY BAY
27 mark, Ser. No. 77/855,722.
28

1 6. A judgment ordering Defendants to take all steps necessary to cancel the
2 domain names www.beautybay.com and www.fragrancebay.com, and all other domain
3 names they control, own, or operate that are directed to US consumers and which contain
4 the terms "BeautyBay," "FragranceBay," "ClearanceBay," or any similar names, and to
5 remove all references to the BeautyBay trade name and BEAUTYBAY Marks from any of
6 their other websites, if any;

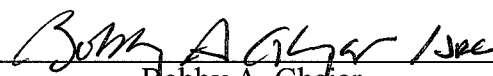
7 7. A judgment ordering Defendants to account to eBay any and all revenues
8 and profits that they have derived from their wrongful actions and to pay all damages that
9 eBay has sustained by reason of the acts complained of herein;

10 8. A judgment awarding eBay enhanced damages under 15 U.S.C. §1117, its
11 reasonable attorneys' fees and costs of suit, prejudgment interest, and, for Defendants'
12 willful and wanton actions, punitive damages against Defendants; and

13 9. A judgment granting eBay such other and further relief as the Court deems
14 just and proper.

15 Dated: June 20, 2013.

16
17 BOBBY A. GHAJAR
18 JAMES R. CADY
19 MARCUS D. PETERSON
20 PILLSBURY WINTHROP SHAW PITTMAN LLP

21 By 
22 Bobby A. Ghajar
23 Attorneys for Plaintiff
24 EBAY INC.
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26
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REQUEST FOR JURY TRIAL

eBay hereby demands a trial by a jury on all issues so triable.

Dated: June 20, 2013.

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